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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 KRISTOPHER STARKGRAF,

10 Plaintiff,

Case No. C23-5390-TSZ-SKV

11 v.

12 PIERCE COUNTY COUNCIL, *et al.*,

13 Defendants.

ORDER TAKING PLAINTIFF'S
MOTION FOR APPOINTMENT OF
COUNSEL UNDER ADVISEMENT
AND STRIKING PLAINTIFF'S
RESPONSE TO DEFENDANTS'
ANSWER

14 This is a civil rights action proceeding under 42 U.S.C. § 1983. Plaintiff Kristopher
15 Starkgraf is currently confined at the Pierce County Jail ("the Jail"). He has submitted to the
16 Court for consideration a request for appointment of counsel (Dkt. 21) and a document which he
17 identifies as an "Opposition to Answer of Defendants Pierce County/Motion to Add Defendant
18 and Show Cause" (Dkt. 26). Defendants object to Plaintiff's requests for relief. Dkts. 24, 28.

19 The Court, having reviewed Plaintiff's requests, and the balance of the record, hereby
20 ORDERS as follows:

21 (1) Plaintiff's request for appointment of counsel (Dkt. 21) is taken under advisement
22 and is STRICKEN from the Court's calendar at this time. Plaintiff seeks an Order directing that
23 counsel be appointed in this matter based upon extraordinary circumstances and the likelihood

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1 that his case will succeed on the merits. Plaintiff notes in his motion that the issues raised in this
2 case are similar to those that were successfully litigated in a case filed by another Jail inmate,
3 Justin Davey.¹ He also appears to reference the fact that counsel was appointed to represent Mr.
4 Davey in his previous case given the complexity of the legal issues and the potential
5 complexities in the litigation process. Finally, Plaintiff notes that he currently has a number of
6 other actions pending in this Court concerning the conditions of his confinement at the Jail and
7 that the conditions at the Jail have exacerbated his mental illness which, in turn, has interfered
8 with his ability to litigate his claims.

9 The instant action is one of a number of cases recently filed by Pierce County Jail
10 inmates asserting claims concerning the plumbing and sewage system at the Jail. The Court is
11 currently attempting to locate counsel to provide representation in one such case that was filed as
12 a purported class action. Mr. Davey, a/k/a Echota Wolfclan, is the lead Plaintiff in that case and
13 Mr. Starkgraf signed on to the proposed class action complaint as a purported class member. *See*
14 *Wolfclan v. Washington State DSHS*, C23-5399-TSZ-SKV, Dkt. 1-1 at 42, 49. The Court deems
15 it appropriate to defer its ruling on the request for appointment of counsel submitted in this case
16 until it has determined whether counsel can be located to provide representation in the other case
17 in which Plaintiff has indicated he is a participant.

18 The Court notes that Plaintiff included in his reply brief in support of his request for
19 counsel a request that his claims be joined with those asserted in Case No. C23-5399-TSZ-SKV.
20 Any request for joinder is properly filed in the action which Plaintiff seeks to join. Moreover,

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¹ The referenced case is *Davey v. Pierce County Council*, C21-5068-LK.

1 given that Plaintiff is a proposed class member in that case already, it would be prudent for
2 Plaintiff to await resolution of the counsel issue in that case before seeking further relief therein.

3 (2) Plaintiff's opposition to Defendants' answer (Dkt. 26) is STRICKEN. A response
4 to an answer to a civil complaint is not a proper pleading and is only permitted when specifically
5 ordered by the Court. *See Fed. R. Civ. P. 7(a)(7)*. The Court sees no need for a response to be
6 filed by Plaintiff in this case. Plaintiff will have an opportunity to litigate the substance of his
7 claims at a later time. To the extent Plaintiff seeks to add a Defendant to this action by way of
8 his proposed opposition to Defendants' answer, Plaintiff is advised that the proper way to add a
9 Defendant is to seek leave to amend in accordance with Fed. R. Civ. P. 15 and Local Civil Rule
10 ("LCR") 15 which requires that a proposed amended pleading be submitted with any motion
11 seeking leave to amend.

12 (3) The Clerk is directed to send copies of this Order to Plaintiff, to counsel for
13 Defendants, and to the Honorable Thomas S. Zilly.

14 DATED this 30th day of October, 2023.

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16 S. KATE VAUGHAN

17 United States Magistrate Judge